

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

United States of America,

Plaintiff,

v.

Case No. 2:15-cr-20522
18 U.S.C. §2251, 2252A
Hon. Avern Cohn

Matthew David Kuppe,

Defendant.

/

MOTION FOR DISCOVERY OF 404(b) EVIDENCE

Defendant, Matthew Kuppe (“Kuppe”), through his attorneys, Hertz Schram PC, by Walter J. Piszcztowski, moves this Honorable Court for entry of an order directing the government to provide the following information:

Pursuant to Federal Rule of Evidence 404(b), the government must provide reasonable notice of evidence of any other crimes, wrongs or acts allegedly committed by Kuppe upon which the government intends to rely, to prove motive, scheme, opportunity, intent, plan, identity, preparation, knowledge or absence of mistake. Kuppe specifically requests the government to comply with the

reasonable notice of requirement of Rule 404(b) by immediately providing disclosure of any evidence the government intends to introduce under the rule.

Defense counsel has sought the concurrence and the relief requested from the Assistant United States Attorney and such concurrence has been denied.

Respectfully submitted,

Hertz Schram PC

/s/ Walter J. Piszcztowski
Attorney for Defendant Matthew Kuppe
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**MEMORANDUM IN SUPPORT OF MOTION FOR
DISCOVERY OF 404(B) EVIDENCE**

I.

Defendant Matthew Kuppe (“Kuppe”) requests the government to disclose all similar crimes, wrongs, or acts allegedly committed by him, that it intends to introduce pursuant to F.R.E. 404(b). By way of correspondence dated September 17, 2015, counsel formally requested the government to provide notice of any 404(b) evidence it intends to introduce at trial. To date the government has not indicated whether it intends to introduce any 404(b) evidence. Kuppe requests, by way of this motion, that the government decide whether such evidence will be forthcoming and to disclose it. F.R.E. 404(b) specifically provides that the prosecution in a criminal case must provide reasonable notice in advance of trial,

or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial. If such evidence does exist, the Rule 404(b) notice requirement serves as a condition precedent to admissibility.

The instant case presents a situation in which early disclosure of the nature of 404(b) evidence that the government intends on introducing be compelled. For the government to disclose at such times as it deems “reasonable” will serve only to frustrate the discovery purposes underlying F.R.E. 404(b) and result in delays attributable to motions directed at the scope and admissibility of such 404(b) evidence.

Given the technological nature of the case, the task of marshaling the evidence in a comprehensive manner as to the offenses charged is a formidable task. Should the government attempt to introduce 404(b) evidence, the task will be all the more complicated

Given the length of its investigation, it is safe to assume in this case that the government has already decided what “other acts” evidence, if any, it can and will use at trial. Accordingly, Kuppe urges this Court to order the government to

disclose all 404(b) evidence at this time.

Respectfully submitted,

Hertz Schram PC

/s/ Walter J. Piszcztowski

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, I electronically filed the foregoing Motion and Memorandum in Support of Motion for Discovery of 404(b) Evidence with the clerk of the court using the ECF system which will send notification of such filing to the ECF participants.

Respectfully submitted,

Hertz Schram PC

/s/ Walter J. Piszcztowski

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